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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,156	08/22/2003	Bruce Young	P1898US00	9592
32709	7590	11/12/2008		
GATEWAY, INC. ATTN: PATENT ATTORNEY 610 GATEWAY DRIVE N. SIOUX CITY, SD 57049			EXAMINER SIDDIQI, MOHAMMAD A	
			ART UNIT	PAPER NUMBER
			2454	
			MAIL DATE	DELIVERY MODE
			11/12/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/646,156

Applicant(s)

YOUNG, BRUCE

Examiner

MOHAMMAD A. SIDDIQI

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period **will** apply and **will** expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply **will**, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 19-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 19-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-6 and 19-24 are presented for examination. Claims 7-18 have been cancelled. Claims 23-24 are new.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 09/23/2008 has been entered.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 1-6 and 19-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drosset et al. (6,662,231) (hereinafter Drosset) in view of Blom et al (US 20030131353) (hereinafter Blom).

5. As per claim 1 , Drosset discloses a method and system for distributing content, comprising:

transmitting content in a streaming content format (MP3, col 2, lines 38-52; col 4, lines 44-52);

receiving a request to store a particular piece of the content (download audio data files, col 2, lines 38-52); and

delivering said particular piece of the content in an archival format to a storage media of a user when said request to store said particular piece of the content is received (download audio data files, col 2, lines 38-52, col 3, lines 20-34, MP3 format);

wherein said archival format allows storage of the content delivered in the archival format (download audio data files, col 2, lines 38-52, col 3, lines 20-34, MP3 format); and

wherein reception of said request and delivering of the particular piece of the content in said archival format occurs during the time of transmission of the content in said streaming content format (MP3, col 2, lines 38-52, col 3, lines 20-34; col 21, lines 35-40). Drosset explicitly did not disclose wherein said streaming content format prevents storage of the content being transmitted in the streaming content format. However, Blom discloses wherein said streaming content format prevents storage of the content

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being transmitted in the streaming content format (streaming does not allow storage of the received media para #0058). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the teaching of Drosset with Blom. The motivation would have been protecting copy rights of digital asset and managing the rights of streaming media.

6. As per claim 2, the claim is rejected for the same reasons as claim 1, above. In addition, Blom discloses streaming content format is copy protected (para # 0008).

7. As per claim 3, the claim is rejected for the same reasons as claim 1, above. In addition, Drosset discloses archival format is copy protected (col 2, lines 45-52; col 3, lines 20-34, MP3 format).

8. As per claim 4, the claim is rejected for the same reasons as claim 1, above. In addition, Drosset discloses authorizing a payment for said request to store said particular piece of the content (col 2, lines 38-52).

9. As per claim 5, the claim is rejected for the same reasons as claim 1, above. In addition, Drosset discloses authorizing said payment for said request includes debiting a charge against a prepayment for the content (col 2, lines 38-52).

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10. As per claim 6, the claim is rejected for the same reasons as claim 1, above. In addition, Drosset discloses the content transmitted in said streaming content format is in conformity with a list of preferences of said user (customized playlists, col 2, lines 44-46).

11. As per claim 19, the claim is rejected for the same reasons as claim 1, above. In addition, Drosset discloses further comprising retrieving a list of preferences of a particular user (fig 2-3; col 6, line 51 to col 7, line 49); and wherein said transmitting of content is performed in conformity with said list of preferences in a streaming content format to said particular user (fig 2-3, col 6, line 51 to col 7, line 49).

12. As per claim 20, Drosset discloses a method for distributing content, comprising: transmitting content in a first streaming content format (fig 6, col 2, lines 38-52; col 4, lines 44-52); receiving a request to store a particular piece of the transmitted content (download audio data files, col 2, lines 38-52); and delivering said particular piece of the content in a second archival format to a storage media of a user when the request to store the particular piece of the content is received (download audio data files, col 2, lines 38-52, col 3, lines 20-34, MP3 format); wherein the second archival format is different from the first streaming content format (stream audio, fig 7, col 6 line 65 – col 7, line 5), the first streaming content format

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preventing storage of the transmitted content on the storage media of the user (stream audio, fig 7, Microsoft media services col 7, lines 1-5) and the second archival format allowing storage of the delivered content on the storage media of the user (download audio data files, col 2, lines 38-52, col 3, lines 20-34, MP3 format);

Drosset explicitly did not disclose wherein the content transmitted in the streaming content format cannot be recorded on the storage media of the user.

However, Blom discloses wherein the content transmitted in the streaming content format cannot be recorded on the storage media of the user (streaming does not allow storage of the received media para #0058). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the teaching of Drosset with Blom. The motivation would have been protecting copy rights of digital asset and managing the rights of streaming media.

13. As per claim 21, the claim is rejected for the same reasons as claim 20, above, in addition, Drosset discloses wherein the delivering of the particular piece of the content in the second archival format to the storage media of the user occurs concurrently with the transmitting of the content in the first streaming content format (fig 7, col 2, lines 38-52, col 3, lines 20-34, col 6 line 65 – col 7, line 5).

14. As per claim 22, the claim is rejected for the same reasons as claim 20, above, in addition, Drosset discloses, wherein the receiving of the request to store the particular piece of the content occurs during the transmitting of the content in the first streaming

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content format (username / password, fig 7), and the delivering of the particular piece of the content in the second archival format to the storage media of the user occurs concurrently with the transmitting of the content in the first streaming content format (stream Audio, fig 7, col 2, lines 38-52, col 3, lines 20-34).

15. As per claim 23, the claim is rejected for the same reasons as claim 1, above. In addition, Blom discloses wherein the content transmitted in the streaming content format cannot be recorded on the storage media of the user.

16. As per claim 24, the claim is rejected for the same reasons as claim 1, above.

Response to Arguments

17. Applicant's arguments with respect to claims 1-6 and 19-22 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MOHAMMAD A. SIDDIQI whose telephone number is (571)272-3976. The examiner can normally be reached on Monday -Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Flynn can be reached on (571) 272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MS

**/Nathan J. Flynn/
Supervisory Patent Examiner, Art Unit 2454**